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ABSTRACT

This guide is a reference for North Dakota school district personnel. It includes all documents related to the subjects of school construction approval for schools under, and over, $150,000; construction loans, including application forms which can be reproduced; and the timelines for both processes. School facility plan forms are provided to guide school districts in the development of sophisticated, conclusive, and supportive documentation for proposed school facility projects. Also included are North Dakota Statutes related to the Joint Powers Agreement, School Construction Approval, State School Construction Fund and Loans, Selling Evidence of Indebtedness, and the Competitive Bidding Process. (GR)

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ED 434 501

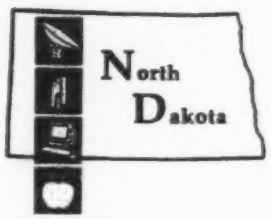
Reference Guide

North Dakota's

School Construction Approval Process

And

School Construction Loan Approval Process



March, 1998

Department of Public Instruction
Dr. Wayne G. Sanstead, State Superintendent
600 E Boulevard Avenue, Dept 201
Bismarck, ND 58505-0440
328-2260

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FORWARD

The 1993 Legislature passed legislation which substantially affected the school construction approval process and the issuance of low interest school construction loans in North Dakota.

The legislation required the Department of Public Instruction to develop rules implementing the statutes. Following an intensive period of public input from school personnel, the Department completed rules and documents which became part of the North Dakota Administrative Code in the fall of 1993.

This guide has been developed by the Department of Public Instruction as a readily accessible reference for school district personnel in North Dakota school districts. It includes all documents which are related to the subjects of school construction approval and construction loans including application forms which can be readily reproduced.

If your school district is contemplating construction or major remodeling projects, it is recommended that you review this guide in detail and notify the DPI Office of School Finance at 224-2267 for assistance.

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State School Construction Fund and Loans

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ARTICLE 67-09

APPROVAL FOR SCHOOL CONSTRUCTION ESTIMATED TO COST MORE THAN TWENTY-FIVE THOUSAND DOLLARS

Chapter:
67-09-01 Approval for School Construction Estimated to Cost More Than Twenty-five Thousand Dollars

CHAPTER 67-09-01
APPROVAL FOR SCHOOL CONSTRUCTION ESTIMATED TO COST MORE THAN TWENTY-FIVE THOUSAND DOLLARS

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67-09-01-01. Definitions. For purposes of this article, the following terms mean:

1. "Application" means the appropriate construction approval application provided by the department or one sanctioned by the department, including all required supporting documentation.

2. "Board" means North Dakota state board of public school education.

3. "Construction" means construction, purchase, repair, improvement, renovation, or modernization of any school building or facility.

4. "Consult" means to meet with, discuss data and plans, and seek advice and counsel.

5. "Department" means the North Dakota department of public instruction.

6. "District" means a North Dakota public school district.

7. "Emergency construction" means any new construction or remodeling construction that is requested as the result of destruction of buildings or facilities by fire, wind, or other act of God.

8. "Facility" includes a parking lot, athletic complex, or any other improvement to real property owned by the district.

9. "Facility plan" means the school district's facility plan required for new construction, or remodeling construction estimated to cost one hundred and fifty thousand dollars or more, completed on forms provided or sanctioned by the department.

10. "New construction" means any construction which provides additional area to the current buildings or facilities and is estimated to cost more than twenty five thousand dollars.

11. "Remodeling construction" means any construction which improves current buildings or facilities and is estimated to cost more than twenty five thousand dollars.

12. "Superintendent" means the North Dakota superintendent of public instruction.

13. "Technical assistance" means counsel, advice, and involvement in the completion of the application and facility plan.

History:
General Authority: NDCC 15-35-01.1
Law Implemented: NDCC 15-35-01.1

67-09-01-02. Construction costing more than twenty-five thousand dollars must be approved. No district may undertake construction of any school building or facility estimated to cost more than twenty-five thousand dollars unless the construction is approved by the superintendent.

History:
General Authority: NDCC 15-35-01.1
Law Implemented: NDCC 15-35-01.1

67-09-01-03. Consultation with the department required. The district shall consult with the department at least:

1. sixty days prior to the submission of an application if the construction is new construction, or remodeling construction estimated to cost one hundred and fifty thousand dollars or more, and

2. thirty days prior to the submission of an application if the construction is remodeling construction estimated to cost less than one hundred and fifty thousand dollars.

The department may waive the timelines in this section for applications submitted under section 67-09-01-06 before July 1, 1994, and for emergency construction.

History:
General Authority: NDCC 15-35-01.1
Law Implemented: NDCC 15-35-01.1

67-09-01-04. Preparing the application. The district shall obtain the appropriate application from the department. The district shall receive and consider technical assistance provided by the department in preparing the application.

History:
General Authority: NDCC 15-35-01.1
Law Implemented: NDCC 15-35-01.1

67-09-01-05. Facility plan required for certain construction. Any district proposing to undertake new construction, or remodeling construction estimated to cost one hundred and fifty thousand dollars or more, must meet the

requirements of this section as well as all other sections in this chapter.

1. The district must submit to the department a facility plan along with the application for construction approval.

2. At the time of consultation with the department, the district shall complete and review with the department its facility plan. The district shall receive and consider technical assistance provided by the department in completing and reviewing the district's facility plan.

3. The district's facility plan shall include:

   a. alternatives considered by the district and reasons for rejecting alternatives,

   b. evidence of attempted cooperation or collaboration with area schools, health and human service agencies, and other educational agencies and political subdivisions,

   c. description of district programs and services and an assessment of improvements that will occur as a result of construction completion,

d. the location of school sites in each surrounding school district, including their attendance numbers in elementary and high school, capacity of buildings, and distances from applicant's district,

e. past, current, and projected enrollment data,

f. trend data on general fund revenues, expenditures, and fund balances,

g. trend data on tax levies,

h. trend data on taxable valuation per pupil,

i. current bonded indebtedness, debt retirement schedules, and total capital expenditures of the district

j. current sources of district revenue,

k. a description and preliminary diagrams of the proposed construction,

l. geographic information regarding area proposed to be served,

m. description of district schools and facilities,

n. violations of fire, health, safety and any other required state or federal standards that will be corrected by the construction,

o. trend data on school or facility maintenance,

p. estimated differences in operating costs as a result of construction completion,

q. description of programs to reduce energy costs and waste disposal costs, and

r. other data as deemed advisable by the Superintendent.

4. The district's facility plan must be approved by the department before it may be submitted to the superintendent with the application.

History:
General Authority: NDCC 15-35-01.1
Law Implemented: NDCC 15-35-01.1

67-09-01-06. Submission of application. The district shall submit the application to the department, along with its approved facility plan, if necessary. If the superintendent determines the application is not complete, the superintendent shall return the application to the district for proper completion.

History:
General Authority: NDCC 15-35-01.1
Law Implemented: NDCC 15-35-01.1

67-09-01-07. Demonstration of need and educational utility. The superintendent may not approve the application unless the district demonstrates to the superintendent's satisfaction the need and educational utility of the project based on criteria which include the following:

1. For remodeling construction estimated to cost less than one hundred and fifty thousand dollars:

   a. the district demonstrates the requisite need for the remodeling construction,

   b. the building or facility will be in use for at least three years,

   c. enrollment is likely to remain relatively stable for at least three years, and

   d. the remodeling construction will enhance or facilitate delivery of educational services in the district.

2. For new construction, or remodeling construction estimated to cost one hundred and fifty thousand dollars or more:

a. the proposed building or facility is comparable in size and quality to buildings or facilities recently constructed in other districts that have similar enrollments,

b. the district has attempted cooperation or collaboration with area schools, health and human service agencies, and other educational agencies and political subdivisions,

c. the need for buildings or facilities could not be met within the district or adjacent districts at a comparable cost by leasing, repairing, remodeling, or sharing existing buildings or facilities or by using temporary buildings or facilities,

d. no form of cooperation with another district would provide the buildings or facilities to meet the needs of the students,

e. the building or facility will enhance or facilitate the delivery of educational services in the district,

f. the economic and population bases of the communities to be served are likely to grow or to

remain at a level sufficient to ensure the cost effectiveness of the building or facility,

g. the building or facility meets or exceeds the size standards recommended by the department,

h. appropriate efforts to determine how this building or facility fits into the learning needs of the area have been made,

i. the availability and manner of financing the construction has been thoroughly evaluated, and

j. the operating budget of the district can satisfactorily meet the projected operation cost of the proposed building or facility.

History:
General Authority: NDCC 15-35-01.1
Law Implemented: NDCC 15-35-01.1

67-09-01-08. Application acted on within sixty days. The superintendent shall, within sixty days of receipt of the completed application, either approve or disapprove the application, and shall provide a written rationale for such approval or disapproval. However, if the application seeks approval of emergency construction, the superintendent shall approve or disapprove the application within seven days, or as soon thereafter as is reasonably possible.

History:
General Authority: NDCC 15-35-01.1
Law Implemented: NDCC 15-35-01.1

67-09-01-09. Appeal of disapproved application to board. If the superintendent disapproves the district's application, the district may appeal the superintendent's decision to the board by serving a written notice of appeal on the superintendent, along with a statement of the reasons why the application should be approved, within thirty days of the mailing of the notification of disapproval. The board, within sixty days of receipt of the written appeal request, shall review the application, the superintendent's written rationale for disapproval, and the district's statement of reasons why the application should be approved, and determine whether the application should be approved. The board's decision on the district's application is final.

History:
General Authority: NDCC 15-35-01.1
Law Implemented: NDCC 15-35-01.1

67-09-01-10. Approval effective for two years. Construction approval received pursuant to this chapter is effective for two years from the date of approval. If the district has not commenced construction witnin the two year period, the district will have to apply again for construction approval.

History:
General Authority: NDCC 15-35-01.1
Law Implemented: NDCC 15-35-01.1

67-09-01-11. Submission of architectural plans. Prior to commencement of approved construction, the district shall submit architectural plans required by law to the department.

History:
General Authority: NDCC 15-35-01.1
Law Implemented: NDCC 15-35-01.1

SCHOOL CONSTRUCTION APPROVAL

PROCESS

Under 150,000

1) Consult/Technical Assistance of Department
   30 days

2) Filing of Application

3) Superintendent acts in 60 days
   Need and Education Utility
   Stability

4) Appeal to State Board of Education
   60 days to act

5) Architectural Plans submitted to
   Superintendent

SCHOOL FINANCE AND ORGANIZATION OFFICE
DEPARTMENT OF PUBLIC INSTRUCTION
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0440

SCHOOL DISTRICT REQUEST FOR APPROVAL OF REMODELING CONSTRUCTION UNDER $150,000

This form is to be used only when the projected cost of construction is less than $150,000 and when the construction does not involve the addition of square footage to a building or facility. The State Superintendent will act on this application within 60 days of receipt.

Application of _____ School District No. _____,

_____ County, or Counties, _____ North Dakota

Number of sections of land in district _____

Status of Accreditation:

( ) accredited ( ) accredited with commendation

( ) accredited warned ( ) not accredited

Taxable Valuation of District for 19_____ $_____

1. Nature of Project: (Brief description - attach additional sheets if necessary)

2. Please provide an explanation as to why the project is needed: (Provide additional sheets if necessary)

3. Estimated Cost of Project:

   a. Construction materials -

   b. Architect's fees -

   c. Site -

   d. Furniture and movable equipment -

   e. Contingent and incidental expenses -

   TOTAL COST OF PROJECT $_____

4. Funds Available to District for this Project:

   a. Building Fund -

   b. Bonds -

   c. General Fund -

   d. Other Sources (Please identify) -

   TOTAL $_____

5. School Enrollment:

Grade	Number	Grade	Number
1	_____	7	_____
2	_____	8	_____
3	_____	9	_____
4	_____	10	_____
5	_____	11	_____
6	_____	12	_____

TOTAL _____

Will this enrollment remain relatively stable for the next three years? Explain.

6. Will this facility be in use as a school facility for at least the next three years? Explain.

7. Will this project enhance or facilitate delivery of educational services in the district? Explain.

Is this construction being requested as the result of destruction of current buildings or facilities by fire, wind, or other act of God?_____

Attach school board minutes indicating project authorization.

Signed _____
President

_____
Business Manager

Date _____

School Construction Approval Process

(over $150,000)

1) Notify DPI at least 60 days before submission of application for assistance.

2) Complete a facility plan and obtain approval.

3) File application with approved facility plan.

4) Superintendent must act on application in 60 days. Decision based on need and education utility of project.

5) Decision may be appealed to State Board of Education. Board must act in 60 days.

6) The district must submit architectural plans to the Department prior to commencement of approved construction.

SCHOOL FINANCE AND ORGANIZATION OFFICE
DEPARTMENT OF PUBLIC INSTRUCTION
600 East Boulevard Avenue
Bismarck, ND 58505-0440

SCHOOL DISTRICT REQUEST FOR APPROVAL OF NEW CONSTRUCTION OVER $25,000 AND REMODELING CONSTRUCTION OVER $150,000

This form is to be used only when the projected cost of new construction is over $25,000 or when remodeling construction is over $150,000. **An approved facility plan must accompany this application**. The State Superintendent will act on this application within 60 days of receipt.

Application of _____ School District No. _____, _____ County(ies), _____, North Dakota.

Status of Accreditation:

( ) accredited
( ) accredited with commendation
( ) accredited warned
( ) not accredited

Emergency construction: Is this construction being requested due to the destruction of current buildings or facilities by fire, wind, or other acts of God? Yes_____ No_____

Facility plan: If your school district has filed a facility plan with the Department of Public Instruction within the last two years, you need only to file project specific forms 1, 2, 21, 22, and 23 with this request to update your plan on file.

Attach school board minutes indicating project authorization.

Signed _____ _____
President Business Manager

Date _____

SCHOOL FACILITY PLAN

The School Facility Plan is intended as a "guide" to assist school districts in the development of sophisticated, conclusive, supportive documentation for proposed school facility projects AND to assist the North Dakota Department of Public Instruction in fulfilling its responsibilities to be accountable to school districts, taxpayers and patrons, and the State of North Dakota in facilitating the delivery of qualitative programs and services to the youth of North Dakota. As School Boards and Superintendents begin the process of assessing needs and planning for possible, future school facility design, frequent, open, candid, and qualitative dialogue between school district leaders and the North Dakota Department of Public Instruction is encouraged and welcomed. The Superintendent of the North Dakota Department of Public Instruction and his staff stand ready to furnish advice, counsel, and technical assistance to school districts embarking upon the design and development of new learning spaces that will further enhance the opportunities for North Dakota's youth to compete with distinction in a highly-competitive global economy.

FORM 1

DESCRIPTION OF PROJECT

_____

School District

_____

Project Name

DESCRIPTION OF PROJECT

Furnish a brief, narrative description of the proposed project, including construction material, number and types of specific learning or other spaces (e.g. classrooms, library, offices, conference rooms, storage, etc.), location, new construction, remodeling, grade levels served, and additional data, including planned start and completion date if project is approved.

Other Data:

* Estimated square footage _____
* Estimated cost/square foot _____
* Estimated total cost of project _____
* Estimated annual (new) operating expense _____
* Estimated annual (new) energy costs _____
* Estimated new staff costs _____

FORM 2

NEED FOR THE PROJECT

_____

School District

_____

Project Name

NEED

Briefly specify the need or needs for undertaking the project and describe improvements that will occur as a result of project completion. Examples: (a) to enhance program and service delivery to students; (b) to correct health and life safety concerns, code violations, statute violations; (c) to address space shortages created by increasing enrollment, open enrollment, restructuring, or the like; (d) to extend the facility's life; (e) to increase facility efficiencies and/or reduce cost outlay; or (f) other.

FORM 3

DISTRICT GEOGRAPHIC INFORMATION

_____

School District

Prepare an outline map of the school district, citing school building locations, possible alternative facilities (for school use), major transportation routes (highways), the project location, other pertinent data.

FORM 4

AREA GEOGRAPHIC INFORMATION

_____

School District

Prepare an outline map of the school district and adjacent school districts. Note all school building locations, other alternative facilities for school use, major highways, the project location, and other significant data (distances, driving times, barriers, etc.).

FORM 5

ALTERNATIVES

_____

School District

Please identify alternatives considered by the School Board to address the school district's facility needs, prior to proposing the project. Include initiatives/overtures extended to cooperate with adjacent school districts, post-secondary institutions, public or private organizations, governmental entities, and other organizations to fulfill the district's facility needs.

FORM 6

REJECTION OF ALTERNATIVES

_____

School District

Present rationale considered by the School Board to reject alternatives for addressing the school district's facility needs, prior to proposing the project. Particularly, detail rationale for rejecting the usage of alternative space available (if any) in adjacent school districts, post-secondary institutions, public or private organizations, governmental entities, and other organizations.

FORM 7

COLLABORATION

_____

School District

Detail briefly below efforts that have been made to cooperate or collaborate in the joint facility design, occupancy, sharing, or other usage of the proposed project with other entities:

* **Area Schools:**

* **Health/Human Service Agencies:**

* **Educational Agencies:**

* **Political Subdivisions:**

* **Other (e.g. private schools; private businesses, etc.)**

FORM 8

FALL ENROLLMENT

_____

School District

_____

YEAR

Grade Level	Enrollment
Pre-K	_____
K	_____
1	_____
2	_____
3	_____
4	_____
5	_____
6	_____
7	_____
8	_____
9	_____
10	_____
11	_____
12	_____
K -6 Total	_____
7 -9 Total	_____
10 -12 Total	_____
7 -12 Total	_____
K -12 Total	_____

FORM 9

PRIOR FALL ENROLLMENT (K-12)

_____
School District

	School Year	Enrollment (K-12)
10	_____ - _____	_____
9	_____ - _____	_____
8	_____ - _____	_____
7	_____ - _____	_____
6	_____ - _____	_____
5	_____ - _____	_____
4	_____ - _____	_____
3	_____ - _____	_____
2	_____ - _____	_____
1	_____ - _____	_____
Current	_____ - _____	_____

FORM 10

PROJECTED FALL ENROLLMENT (K-12) *

_____
School District

	School Year	Enrollment (K-12)
Current	____-____	_____
1	____-____	_____
2	____-____	_____
3	____-____	_____
4	____-____	_____
5	____-____	_____
6	____-____	_____
7	____-____	_____
8	____-____	_____
9	____-____	_____
10	____-____	_____

* Project on the basis of current student enrollment and most recent census.

FORM 11

TREND IN ENROLLMENT
(Summary of forms 9 and 10)

_____
School District

Enrollment Actual Changes	**District Gain/Loss**
_____to_____	_____

Enrollment Projected Changes	**District Gain/Loss**
_____to_____	_____

Twenty Year Trend	**District Gain/Loss**
_____to_____	_____

* Project on the basis of current student enrollment and most recent census.

FORM 12

GENERAL FUND REVENUES, EXPENDITURES, BALANCES

_____
School District

Year	Revenues	Expenditures	Balances
___ - ___	_____	_____	_____
___ - ___	_____	_____	_____
___ - ___	_____	_____	_____
___ - ___	_____	_____	_____
___ - ___	_____	_____	_____
___ - ___ (Current)	_____	_____	_____

FORM 13

EXPENDITURES/PUPIL

_____
School District

Year	General Fund Budget	Pupils	Expenditures/ Pupil
___ - ___	_____	_____	_____
___ - ___	_____	_____	_____
___ - ___	_____	_____	_____
___ - ___	_____	_____	_____
___ - ___	_____	_____	_____
___ - ___ (Current)	_____	_____	_____

FORM 14

MILL LEVIES

_____
School District

Year	General	Building	S & I	Total
___ - ___	_____	_____	_____	_____
___ - ___	_____	_____	_____	_____
___ - ___	_____	_____	_____	_____
___ - ___	_____	_____	_____	_____
___ - ___	_____	_____	_____	_____
___ - ___ (Current)	_____	_____	_____	_____

FORM 15

TAXABLE VALUATION

_____

School District

Year	Total Taxable Valuation	Taxable Valuation/Pupil
___ - ___	_____	_____
___ - ___	_____	_____
___ - ___	_____	_____
___ - ___	_____	_____
___ - ___	_____	_____
___ - ___	_____	_____

(Current)

FORM 16

SOURCES OF REVENUE

_____
School District

_____
Year

	Federal %	State %	Local %	Total %
District	_____	_____	_____	_____
North Dakota Average	_____	_____	_____	_____

FORM 17

INDEBTEDNESS

_____
School District

Debt	Amount	Retirement Schedule		
		Principal	Interest	Repaid
Bonded:				
* Issue 1:				
* Issue 2:				
* Issue 3:				
Other (Explain/List):				
*				
*				
*				

FORM 18

DESCRIPTION OF PROGRAMS AND SERVICES

_____
School District

_____
Year

Discipline	Semester Courses	Services	
Agriculture	_____	Special Education	_____
Art	_____	_____	_____
Business/Marketing	_____	_____	_____
Computer	_____	_____	_____
Communications/English	_____	_____	_____
Foreign Language	_____	_____	_____
Home Economics	_____	Counseling	_____
Industrial Technology	_____	Library/Media	_____
Mathematics	_____	Art (Specialist)	_____
Music	_____	Music (Spec)	_____
Physical Education/Health	_____	Physical Education (Spec)	_____
Science	_____	Computer (Spec)	_____
Social Studies	_____	Community Ed.	_____
Distributive Education	_____	Adult Ed.	_____
Telecommunication	_____	Chemical Dep.	_____
Other:		Social Work	_____
_____	_____		
_____	_____	Gifted	_____
_____	_____	Athletics (#___)	_____
		Clubs (#___)	_____
		Co-curricular (#___)	_____
		_____	_____
		_____	_____
		_____	_____

Please delineate the number of semester courses taught (not offered) in subject matter disciplines in the school district during the current year.

FORM 19

OVERVIEW OF FACILITIES

_____
School District

Facility	Grade Levels	Orig. Const. /Add. Dates	Site Size	Capacity	Current Enrollment	% of Capacity

FORM 20

ADJACENT DISTRICT FACILITIES/SITES

_____
Year

District	Enrollment K-6	7-12	K-12	Bldg. Capacities	Distance
*					
*					
*					
*					
*					

FORM 21

VIOLATIONS AND PROPOSED IMPACT

_____

School District

_____

Project Name

Impact of project on existing violations that the school district may have (i.e. fire and safety, American Disabilities Act, asbestos abatement, food storage and preparation, etc.)

*

*

*

FORM 22

FACILITY EFFICIENCIES

_____

Project Name

Estimate differences that will result in operating costs AND describe perceived reductions in energy and waste disposal costs to the district that will occur as a result of the project's approval.

FORM 23

ASSURANCES

_____

School District

_____

Project Name

Provide assurances that (a) the proposed project is comparable in size and quality to projects recently constructed in other districts with similar enrollments, (b) collaboration/cooperation has been attempted, (c) the need for facilities could not be met within the district or adjacent districts at a comparable cost, (d) the facility will enhance or facilitate educational service delivery, (e) the economic and population bases of the communities to be served are likely to grow or remain level, (f) the facility meets/exceeds recommended size standards, (g) an analysis has been made to determine the facility accommodation of area learning needs, (h) the availability and manner of financing construction has been evaluated, (i) the district's operating budget can meet the proposed project's operating costs in a satisfactory manner.

a. Size and Quality Comparability:

b. Collaboration/Cooperation:

c. Inability to Identify/Secure Facility Alternatives at Comparable Cost:

d. Enhance Delivery of Educational Services:

e. Economic and Population Bases:

f. Meeting/Exceeding Size Standards:

g. Accommodation of Area Learning Needs:

h. Availability/Manner of Financing Construction:

i. Operating Budget Able to Meet Projected Operating Costs:

ARTICLE 67-10

SCHOOL CONSTRUCTION LOAN APPLICATION AND LOAN APPROVAL

Chapter:
67-10-01 School Construction Loan Application and Loan Approval

CHAPTER 67-10-01
SCHOOL CONSTRUCTION LOAN APPLICATION AND LOAN APPROVAL

Section
67-10-01-01 Definitions
67-10-01-02 Loan eligibility
67-10-01-03 Application form
67-10-01-04 Times loan applications considered
67-10-01-05 Loan approval-Demonstration of fiscal need and capacity to repay
67-10-01-06 Loan approval-Order-Determination of loan amount and percent of interest
67-10-01-07 Board approval

67-10-01-01. Definitions. For purposes of this article, the following terms mean:

1. "Board" means the board of university and school lands.

2. "Department" means the North Dakota department of public instruction.

3. "District" means a North Dakota public school district.

4. "Fund" means the coal development trust fund controlled by the Board of University and School Lands.

5. "Loan application" means the construction loan application provided by the department of public instruction.

6. "Project" means a building or facility that a school district is authorized to construct, purchase, repair, improve, renovate or modernize under N.D.C.C. § 15-35-01.1.

7. "Superintendent" means the North Dakota Superintendent of Public Instruction.

History:
General Authority: NDCC 15-35-01.1
Law Implemented: NDCC 15-35-01.1, 15-60

67-10-01-02. Loan eligibility. A district may apply for a loan from the fund if the following are met:

1. The project has been approved by the superintendent or the state board of public school education pursuant to N.D.C.C. § 15-35-01.1, and is estimated to cost in excess of fifty thousand dollars; and

2. The district has an existing indebtedness equal to at least fifteen percent of the district's taxable valuation; and

3. The principal amount of the loan requested does not exceed the lesser of thirty percent of the taxable valuation of the district or five million dollars.

History:
General Authority: NDCC 15-35-01.1
Law Implemented: NDCC 15-35-01.1, 15-60

67-10-01-03. Application form. The district shall acquire a loan application from the department and submit it to the Superintendent. The district shall provide the following in the loan application:

1. verification of existing indebtedness of at least fifteen percent of the district's taxable valuation,
2. a discussion of alternative sources or methods for financing the construction or improvement program,
3. verification that the school board of the district intends to issue and sell evidences of indebtedness to finance the construction or improvement,
4. past, current and projected enrollment data,
5. current bonded indebtedness, debt retirement schedules, and total capital expenditures of the district,
6. current taxable valuation of the district,
7. trend data of per pupil taxable valuation of the district,
8. current and projected operating expenses of the district,
9. data on tax levies of the district, and
10. other data as deemed advisable by the superintendent.

History:
General Authority: NDCC 15-35-01.1
Law Implemented: NDCC 15-35-01.1, 15-60

67-10-01-04. Times loan applications considered . Loan applications received before July 1, 1994 will be considered for approval within forty-five days after the application is received. Thereafter, loan applications will be considered for approval two times each year, in the months of March and September. For consideration in March, the loan application must be received no later than February 1. For consideration in September, the loan application must be received no later than August 1.

History:
General Authority: NDCC 15-35-01.1
Law Implemented: NDCC 15-35-01.1, 15-60

67-10-01-05. Loan approval-Demonstration of fiscal need and capacity to repay. Before the superintendent may approve a loan, the district must demonstrate to the superintendent's satisfaction fiscal need for the loan and capacity to repay the loan. To determine fiscal need and capacity to repay, the following factors will be considered:

1. the ratio between the district's total capital debt and taxable valuation, (a 1:1 ratio indicates the highest level of need),

2. the ratio between the district's tax levies and the average district tax levies for the state of North Dakota (the higher the total tax levies in relationship to the average district tax levies, the greater the need),

3. the ratio between the district's total capital debt and the district's annual total expenditures (the higher the total capitol debt in relationship to the total annual expenditures, the greater the need),

4. the ratio of the district's per pupil taxable valuation to the average per pupil taxable valuation for the state of North Dakota (the lower the per pupil taxable valuation in relationship to the state average, the greater the need), and

5. a student population base that assures a reasonable level of cost effectiveness of the facility.

History:
General Authority: NDCC 15-35-01.1
Law Implemented: NDCC 15-35-01.1, 15-60

67-10-01-06. Loan approval-Order-Determination of loan amount and percent of interest. Loan applications will be considered for approval in the order of approval of construction of the project by the superintendent or the state board of public school education. The superintendent may determine the loan amount and a percent of interest to be paid on the loan.

1. The superintendent will not approve a loan amount that exceeds two million five hundred thousand dollars for any particular application. In determining the loan amount to be awarded, the superintendent shall consider the following:

   a. the total number of loan applications received and the total amount of loans requested in the six month application period, or, if the application is received prior to July 1, 1994, the total number of loan applications received and the total amount of loans requested at the time the application is considered, and

   b. the total amount of money the superintendent has determined will be approved for loans in the six month period, or, if the application is received prior to July 1, 1994, the total amount of money the superintendent has determined will be approved for loans at the time the application is considered, and

   c. the cost of the project and the fiscal capacity of the district.

2. The interest on a loan may not exceed the rate of two percent below the net interest rate on comparable tax *exempt obligations as determined on the date the loan* application is approved by the superintendent, provided the interest rate may not exceed six percent.

History:
General Authority: NDCC 15-35-01.1
Law Implemented: NDCC 15-35-01.1, 15-60

67-10-01-07. Board approval. The superintendent shall submit any approved loan applications to the board for final approval with recommendations regarding the loan amounts, the percents of interest to be paid on the loans, and the terms of the loans. The board shall consider the loan applications in the order in which they were approved by the superintendent. The board shall consider the superintendent's recommendation in determining whether to approve the loan. A loan may not be approved if approval would increase the outstanding principal balance of loans made from the fund to more than twenty-five million dollars. The superintendent shall notify each applicant of the action taken by the board.

History:
General Authority: NDCC 15-35-01.1
Law Implemented: NDCC 15-35-01.1, 15-60

School Construction Loan Process

1) Submit application with approved facility plan or updates.

   Threshold requirements for application:

   Construction Approval
   More than $50,000
   15% existing indebtedness

2) Submit by February 1 or August 1.

3) Application is acted upon in March or September. Decision based on fiscal needs and capacity to repay.

4) DPI forwards recommendations on amount, interest rate, and term to Board of University and School Lands.

   Loan is limited to 30% of taxable valuation or $2,500,000.

SCHOOL FINANCE AND ORGANIZATION OFFICE
DEPARTMENT OF PUBLIC INSTRUCTION
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0440

SCHOOL CONSTRUCTION LOAN APPLICATION

School District	Date of Application
Address	Contact Person/Phone

NOTE: Loan applications will be considered for approval two times each year, in the months of March and September. For consideration in March, the loan application must be received no later than February 1. For consideration in September, the loan application must be received no later than August 1.

State law requires that school districts meet the following three criteria to apply for a loan from the coal development trust fund:

1. The school district's construction project has been approved by the Superintendent of Public Instruction or the State Board of Public School Education and is estimiated to cost in excess of $50,000.

   a. Has your school district received approval for this construction project within the last two years? _____

   b. What is the estimated cost of the project? _____

2. The school district has an existing indebtedness equal to at least fifteen percent of the district's taxable valuation.

   a. What is your district's existing indebtedness? _____

   b. What is your district's taxable valuation? _____

   c. The existing indebtedness is _____% of the district's taxable valuation.

3. The principal amount of the loan requested does not exceed the lesser of thirty percent of the taxable valuation of the district or five million dollars.

   a. What is the principal amount of the loan which you are requesting? _____

   b. What is the current taxable valuation of the district? _____

   c. 30% of the taxable valuation is _____.

   d. Is the principal amount of the loan requested equal to or less than the lesser of 30% of the taxable valuation of the district or five million dollars?
   Yes ____ No ____

If you meet the foregoing three criteria, you may apply for a loan. Complete the remaining parts of the application.

1. Does your school district intend to issue and sell evidences of indebtedness to finance the proposed construction or improvement of the project? _____ Please submit appropriate verification regarding bond issue.

2. What other methods or sources of financing the construction project were considered? Please list and describe how each is being used if applicable. Also explain why other methods of financing were discarded.

3. Does your district have a bond rating? If so, what date was it issued. (please include documentation of the bond rating)

4. Please provide your best estimate as to when construction will begin.

<u>The following information can be provided by simply enclosing a copy of the facility plan which your school district developed for school construction approval. Please update your facility plan where appropriate.</u>

3. Provide a description of the construction project for which the loan application is being made.
4. Provide past (5 years), current and projected (5 years) enrollment data for the district.
5. Provide current bonded indebtedness, debt retirement schedules, and the total capital expenditures of the district.
6. Provide past (5 years) and current taxable valuation of the district.
7. Provide data of per pupil taxable valuation of the district for the last five years.
8. Provide the current and projected operating expenses of the district including total expenditures of the district.
9. Provide data on current tax levies of the district.

I certify that the information contained in this application is true and correct to the best of my knowledge.

Date _____ Signed_____
President

Please attach a copy of the board resolution authorizing this loan application. A memo listing loan closing requirements is attached for your information.

SCHOOL CONSTRUCTION LOANS - CLOSING REQUIREMENTS

The Bank of North Dakota will be handling the loan closing for school construction loans approved by the Board of University and School Lands. The documents required are outlined below and must be submitted to the Bank for review prior to the closing date:

* Initial Resolution
* Bond Issuance Resolution
* Final Resolution
* Closing Certificate
* Non-arbitrage Certificate (Tax-exempt financings only)
* Bond (One bond with amortization schedule) dated the date of closing
* Recognized Bond Counsel Opinion

Note: The School District will have the option to prepay the debt at any time.

Principal and interest is payable annually on June 1st.

Upon receipt and review of the executed documents, the Bank will fund the loan and make payment to the school district either by check, wire transfer or account credit at the Bank. The school district will need to provide the Bank with payment instructions.

The Bank's fee for providing paying agent/registrar services is $200.00 payable yearly in advance. The school district will be billed at closing the amount due from the closing date to the first principal payment date. Thereafter, the annual fee will be included with the principal and interest billing.

If you have any questions, the school district or your recognized bond counsel may contact the BND Trust Department at 701-224-5609.

CHAPTER 15-35

SCHOOL BUILDINGS

Section
15-35-01.1. Approval required for certain school district construction projects.
15-35-01.2. Inspection of schools — Submission of inspection report — Correction of deficiencies.
15-35-10. Fire, tornado, and disaster emergency drills in rural schools — Rules — Duty of county superintendent — Repealed.

15-35-01.1. Approval required for certain school district construction projects.

1. Notwithstanding the powers and duties of school boards of public school districts otherwise provided by law, all construction, purchase, repair, improvement, renovation, or modernization of any school building or facility within a school district estimated by the school boards to cost in excess of twenty-five thousand dollars may not be commenced unless approved by the superintendent of public instruction. No such construction, purchase, repair, improvement, renovation, or modernization of any school building or facility may be approved unless the school district proposing the project demonstrates the need, the educational utility of the project, fiscal need, and the capacity to pay for the project under rules adopted by the superintendent of public instruction pursuant to chapter 28-32 after receiving input from the state board of public school education. In the event of disagreement between the superintendent of public instruction and the school board applying for approval of a construction project under this section, the school board may appeal the application to the state board of public school education and the decision of the state board approving or disapproving the application is final.
2. For purposes of this section, "facility" includes a parking lot, athletic complex, or any other improvement to real property owned by the school district.
3. This section does not apply to any construction, purchase, repair, improvement, renovation, or modernization required as part of a plan of correction approved by the state fire marshal under section 15-35-01.2, unless the cost of the improvements exceeds seventy-five thousand dollars.

Source: S.L. 1969, ch. 189, § 2; 1973, ch. 179, § 1; 1993, ch. 186, § 3; 1995, ch. 163, § 3; 1997, ch. 165, § 1.

Effective Date.
The 1997 amendment of this section by section 1 of chapter 165, S.L. 1997 became effective August 1, 1997.
The 1995 amendment of this section by section 3 of chapter 163, S.L. 1995 became effective August 1, 1995.

15-35-01.2. Inspection of schools — Submission of inspection report — Correction of deficiencies.

1. The state fire marshal or the state fire marshal's designee shall inspect each public and private elementary and secondary school in this state at least once every three years, prepare an inspection report, and provide copies of the report to the superintendent of the school district and the superintendent of public instruction.
2. a. If a deficiency is noted, the superintendent of the school district shall submit a plan of correction to the state fire marshal or the state fire marshal's designee and shall remedy the deficiency within a time period acceptable to the state fire marshal or the state fire marshal's designee and the local school board affected by the deficiency, but not later than the next budget period.
   b. If the report discloses an imminent fire hazard, the state fire marshal or the state fire marshal's designee shall immediately notify the school district board, the superintendent of the school district, and the superintendent of public instruction of the hazard. Upon the recommendation by the superintendent of public instruction for immediate closure, the school district board and the superintendent of the school district may immediately close some or all of the school, until the fire hazard is eliminated. In the case of a closure, the superintendent of the school district in which the public school is located, or the administrator of the private school shall cooperate with the superintendent of public instruction to make adequate arrangements for the interim education of all affected students.

Source: S.L. 1997, ch. 165, § 2.

Effective Date.
This section became effective August 1, 1997.

15-35-09. Fire, tornado, and disaster emergency drills — Duty of superintendents and teachers. All public schoolteachers who teach in school buildings consisting of more than one room shall conduct at least one fire, tornado, or disaster emergency drill each month except when the weather is inclement. In districts having a superintendent, the superintendent shall prescribe rules governing fire, tornado, and disaster emergency drills as provided in this section.

Source: S.L. 1915, ch. 137, § 1; 1925 Supp., § 1494b1; R.C. 1943, § 15-3509; S.L. 1961, ch. 158, § 19; 1981, ch. 186, § 1.

15-35-11. Doors in schoolhouses to be unlocked and fire escapes kept clear. All doors in schoolhouses shall be kept unlocked from eight-thirty a.m. to four-thirty p.m. on school days. The way of egress to the fire escapes in every school building shall be kept free from all obstruction at all times.

Source: S.L. 1913, ch. 255, §§ 1, 2; C.L. 1913, §§ 1200, 1201; R.C. 1943, § 15-3511.

15-35-12. School buildings — Sanitation. Every public school building shall be kept clean and free from effluvia arising from a drain, privy, or nuisance, and shall be provided with a sufficient number of water closets, earth closets, or privies, and shall be ventilated in such a manner that the air shall not become so impure as to be injurious to health.

Source: S.L. 1895, ch. 55, § 1; R.C. 1895, § 874; R.C. 1899, § 874; R.C. 1905, § 1038; S.L. 1911, ch. 266, § 290; 1911, ch. 269, § 2, subs. 4; C.L. 1913, §§ 1403, 1490, subs. 4; R.C. 1943, § 15-3512.

Cross-References.
County superintendent of health to enforce cleanliness of schools, see § 23-03-07, subs. 10.

15-35-13. Superintendent of public instruction may order change in sanitary or ventilating systems — Appeal — Penalty. Repealed by S.L. 1975, ch. 106, § 673.

15-35-14. Use of school buildings for other than school purposes. School boards having charge of school buildings and other school facilities may permit the use thereof under proper restrictions for any appropriate purpose when not in use for school purposes. Equal rights and privileges shall be accorded to all religious denominations and to all political parties. Furniture fastened to the buildings shall not be removed or unfastened. Public school and high school auditoriums, gymnasiums, and other school facilities may be let for meetings, entertainments, or conventions of any kind, subject to such restrictions as the governing board of the district shall prescribe. Such use of the buildings and other facilities shall not be permitted to interfere with the operation of the schools or with school activities. A charge may be made for the use of the buildings, facilities, or any portion thereof.

Source: S.L. 1890, ch. 62, § 80; R.C. 1895, § 700; R.C. 1899, § 700; R.C. 1905, § 828; S.L. 1911, ch. 266, § 77; C.L. 1913, § 1183; S.L. 1931, ch. 251, § 1; R.C. 1943, § 15-3514; S.L. 1961, ch. 158, § 22; 1975, ch. 106, § 124; 1977, ch. 163, § 1.

Theatrical Entertainments.
A school board may rent its high school auditorium for theatrical entertainments. Simmons v. Board of Education of Crosby (1931) 61 ND 212, 237 NW 700.

Collateral References.
68 Am. Jur. 2d, Schools, §§ 75-77.
78 C.J.S. Schools and School Districts, § 259.
Use of public school premises for religious purposes during nonschool time, 79 ALR 2d 1148.
Use of school property for other than public school or religious purposes, 94 ALR 2d 1274.

15-35-15. Duty of superintendent of public instruction to enforce statutes. The provisions of this chapter shall be enforced by the superintendent of public instruction or some person designated by him for that purpose.

Source: S.L. 1911, ch. 269, § 3; C.L. 1913, § 1491; R.C. 1943, § 15-3515.

15-35-16. Penalty for improper erection of school building. Any architect or other person who draws plans or specifications for, or who superintends the erection of, a public school building, or who erects or constructs a public school building in violation of the provisions of this chapter, shall be guilty of an infraction.

Source: S.L. 1911, ch. 269, § 6; C.L. 1913, § 1494; R.C. 1943, § 15-3516; S.L. 1975, ch. 106, § 125.

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CHAPTER 15-60

STATE SCHOOL CONSTRUCTION FUND

section
15-60-01 Definitions.
15-60-03 Purposes and general powers — Repealed.
15-60-06 Governing body — Repealed.
15-60-07 Moneys of the fund — Repealed.
15-60-08 Competition in award of contracts — Repealed.
15-60-10 Loans.
15-60-11 School board may issue evidences of indebtedness.

15-60-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Bank" means the Bank of North Dakota.
2. "Board" means the board of university and school lands.
3. "Construction" means purchase, lease, or construction, and the term "to construct" means to purchase, lease, or construct in such manner as may be deemed desirable.
4. "Fund" means the coal development trust fund created by section 21 of article X of the Constitution of North Dakota and section 57-62-02.
5. "Improvement" means extension, enlargement, or improvement, and the term "to improve" means to extend, to enlarge, or to improve in such manner as may be deemed desirable.
6. "Project" means any structure or facility that a school district is authorized to construct or improve under section 15-35-01.1 and which is estimated to cost in excess of fifty thousand dollars.
7. "Superintendent" means the superintendent of public instruction.

Source: S.L. 1953, ch. 136, § 1; 1955, ch. 132, § 21; R.C. 1943, 1957 Supp., § 15-6001; S.L. 1983, ch. 82, § 35; 1991, ch. 204, § 1; 1993, ch. 186, § 4.

15-60-03. Purposes and general powers. Repealed by S.L. 1993, ch. 186, § 11.

15-60-06. Governing body. Repealed by S.L. 1993, ch. 186, § 11.

15-60-07. Moneys of the fund. Repealed by S.L. 1993, ch. 186, § 11.

15-60-08. Competition in award of contracts. Repealed by S.L. 1993, ch. 186, § 11.

Note.

Section 15-60-08 was amended by the 1993 Legislative Assembly in section 106 of chapter 54, S.L. 1993, and repealed by section 11 of chapter 186, S.L. 1993. The section is treated as repealed.

15-60-10. Loans.

1. The board may authorize the use of moneys deposited in the coal development trust fund established pursuant to section 21 of article X of the Constitution of North Dakota and subsection 1 of section 57-62-02 for the purpose of funding loans described in this chapter. The outstanding principal balance of loans funded under this chapter may not exceed twenty-five million dollars. The board may adopt policies and rules for funding school construction loans.
2. A project must be approved by the superintendent pursuant to section 15-35-01.1 before a loan may be issued under this section. An application for a loan under this section must be submitted to the superintendent. The application may be submitted before or after authorization of a bond issue in accordance with chapter 21-03. If the vote to authorize a bond issue precedes the application for a loan, the application must be acted upon by the superintendent expeditiously, but no later than one hundred eighty days from the date it is received by the superintendent. The application must contain information deemed necessary by the superintendent, including a discussion of alternative sources or methods for financing the construction or improvement, and must be considered in the order of its approval under subsection 1 of section 15-35-01.1. If the superintendent approves the loan, the superintendent may also determine the loan amount and a percent of interest to be paid on the loan. In determining the amount of a loan, the superintendent shall take into account the cost of the project and the fiscal capacity of the school district. To be eligible for a loan, the school district must have an existing indebtedness equal to at least fifteen percent of the school district's taxable valuation. In determining a school district's existing indebtedness, the superintendent shall include outstanding indebtedness authorized by an election under section 21-03-07 but not issued, and indebtedness authorized to be paid with dedicated tax levies under subsection 7 of section 21-03-07 but not issued. The interest on a loan may not exceed the rate of two percent below the net interest rate on comparable tax-exempt obligations as determined on the date the application is approved by the superintendent pursuant to section 15-35-01.1, provided the interest rate may not exceed six percent. The superintendent may adopt rules governing school construction loans.
3. Loan applications approved by the superintendent must be forwarded to the Bank. The Bank shall manage and service all school construction loans issued under this chapter and shall execute all necessary loan instruments. The Bank may charge loan recipients a fee for managing and servicing the loan. The Bank shall receive payments of principal and interest from the school districts, and shall remit payments of principal and interest to the board, which must use or deposit the payments in accordance with section 57-62-02 and section 21 of article X of the Constitution of North Dakota.

Source: S.L. 1993, ch. 186, § 5; 1995, ch. 163, § 4; 1995, ch. 204, § 1.

Effective Date.

The 1995 amendment of this section by section 4 of chapter 163, S.L. 1995 became effective August 1, 1995.

The 1995 amendment of this section by section 1 of chapter 204, S.L. 1995 became effective March 27, 1995, pursuant to an emergency clause in section 2 of chapter 204, S.L. 1995.

Note.

Section 15-60-10 was amended twice by the 1995 Legislative Assembly. Pursuant to section 1-02-09.1, the section is printed above to harmonize and give effect to the changes made in section 4 of chapter 163, S.L. 1995, and section 1 of chapter 204, S.L. 1995.

15-60-11. School board may issue evidences of indebtedness. The school board of a school district may issue and sell evidences of indebtedness pursuant to chapter 21-03 to finance the construction or improvement of a project approved under this chapter. The principal amount of the loan and the evidences of indebtedness to repay the loan may not exceed the lesser of thirty percent of the taxable valuation of the school district or five million dollars. Evidences of indebtedness issued pursuant to this chapter constitute a general obligation of the school district.

Source: S.L. 1993, ch. 186, § 6.

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TITLE 48

PUBLIC BUILDINGS

CONTRACTORS' BONDS AND INSURANCE

48-01-01. Bonds from contractors for public improvements. Repealed by S.L. 1995, ch. 443, § 29.

PUBLIC IMPROVEMENT CONTRACT BIDS

48-01.1-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Construction" includes repair and alteration.
2. "Construction administration" means administrative services provided on behalf of the governing body, either by the governing body or a registered design professional, and includes providing clarifications, submittal review, recommendations for payment, preparation of change orders, and other administrative services included in the agreement with the registered design professional. The term does not include supervision of the construction activities for the construction contracts.
3. "Construction management" means the management and supervision of the construction of a public improvement, including the management and supervision of multiple prime contracts. The term does not include construction administration performed by a design professional under the terms of a professional services agreement with the governing body.
4. "Contractor" means any person, duly licensed, that undertakes or enters a contract with a governing body for the construction or construction management of any public improvement, including multiple prime contracts.
5. "Governing body" means the governing officer or board of any state entity or of any political subdivision.
6. "Public improvement" means any improvement the cost of which is payable from taxes or other funds under the control of a governing body including improvements for which special assessments are levied. The term does not include any county road construction and maintenance, state highway, or public service commission project governed by titles 11, 24, or 38.
7. "Surety" means a bond or undertaking executed by a surety company authorized to do business in this state which is countersigned by an agent of that company.

Source: S.L. 1995, ch. 443, § 16; 1997, ch. 394, § 1.

48-01.1-02. Contracts let to lowest bidder — Emergency waiver. A governing body shall award a contract for the construction of a public improvement under this chapter to the lowest responsible bidder. The governing body may reject any bid and readvertise for proposals if no bid is satisfactory, or if it believes any agreement has been entered into by the bidders or others to prevent competition. If the governing body determines that an emergency situation exists, a contract may be made without seeking bids.

Source: S.L. 1995, ch. 443, § 16.

48-01.1-03. Publication of advertisement for bids. If a contract of a governing body for the construction of a public improvement is estimated to cost in excess of one hundred thousand dollars, the governing body shall advertise for bids by publishing for three consecutive weeks, the first publication to be at least twenty-one days before the date of the opening of bids. The advertisement must be published in the official newspaper of the political subdivision in which the public improvement is or will be located, and in a trade publication of general circulation among the contractors, building manufacturers, and dealers in this state, except the advertisement for a public improvement financed by special assessments need only be published once each week for two weeks in the official newspaper with the first publication being at least fourteen days before bid opening.

Source: S.L. 1995, ch. 443, § 16; 1997, ch. 395, § 1.

48-01.1-04. Plans and specifications for public improvement contracts. If a contract of a governing body for the construction of a public improvement is estimated to cost in excess of one hundred thousand dollars, the governing body shall procure plans, drawings, and specifications for the work from a licensed architect or registered professional engineer. For public buildings in use by or to be used by the North Dakota agricultural experiment stations in connection with farm or agricultural research operations, the plans, drawings, and specifications, with the approval of the board of higher education, may be procured from a registered professional engineer if the engineer is in the regular employment of the agricultural experiment station.

Source: S.L. 1995, ch. 443, § 16; 1997, ch. 396, § 2.

48-01.1-05. Contents of advertisement. The advertisement for bids required by section 48-01.1-03 must state:

1. When and where the plans, drawings, and specifications may be seen and examined.
2. The place, date, and time the bids will be opened.
3. That each bid must be accompanied by a separate envelope containing a bidder's bond in a sum equal to five percent of the full amount of the bid, executed by the bidder as principal and by a surety, conditioned that if the principal's bid is accepted and the contract awarded to the principal, the principal, within ten days after notice of award, shall execute a contract in accordance with the terms of the bid and a contractor's bond as required by law and the regulations and determinations of the governing body. Countersignature of a bid bond is not required under this section.
4. That a bidder, except a bidder on a municipal, rural, and industrial water supply project authorized for funding under Public Law No. 99-294 [100 Stat. 426; 43 U.S.C. 390a], must be licensed for the full amount of the bid, as required by section 43-07-05. For projects authorized for funding under Public Law No. 99-294 [100 Stat. 426; 43 U.S.C. 390a], the advertisement must state that, unless a bidder obtains a contractor's license for the full

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amount of its bid within twenty days after it is determined the bidder is the lowest and best bidder, the bid must be rejected and the contract awarded to the next lowest, best, and licensed bidder.

5. That no bid may be read or considered if it does not fully comply with the requirements of this section and that any deficient bid submitted must be resealed and returned to the bidder immediately.
6. That the right of the governing body to reject any bid is reserved.

Source: S.L. 1995, ch. 443, § 16.

48-01.1-06. Bid requirements for public buildings. Multiple prime bids for the general, electrical, and mechanical portions of a project are required when any individual general, electrical, or mechanical contract is in excess of one hundred thousand dollars. The governing body may also allow submission of single prime bids or bids for other portions of the project at its discretion. The governing body may not accept the single prime bid unless that bid is lower than the combined total of the lowest and best multiple bids for the project.

Source: S.L. 1995, ch. 443, § 16; 1997, ch. 397, § 1.

48-01.1-07. Opening of bids — Award of contract. At the time and place specified in the notice, the governing body shall open publicly and read aloud all bids received and thereafter award the contract to the lowest and best bidder or reject all bids. The governing body may advertise for new bids in accordance with this chapter until a satisfactory bid is received. The governing body shall require the contractor to whom the contract is awarded to post a bond in accordance with chapter 48-02.

Source: S.L. 1995, ch. 443, § 16.

48-01.1-08. Coordination of work under multiple prime bids. After competitive bids for the general, electrical, and mechanical work are received as part of the multiple prime bids, the governing board may assign the electrical and mechanical contract and any other contracts to the general contractor for the project to facilitate the coordination and management of the work only.

Source: S.L. 1995, ch. 443, § 16.

48-01.1-09. Use of construction manager. If a governing body uses a construction manager on a public improvement, the construction manager must be a licensed contractor. A construction manager awarded a contract for construction of a public improvement shall bond the entire cost of the project through a single bond, or through bonds supporting all bid packages and the construction manager's bond for the full amount of the construction manager's services.

Source: S.L. 1997, ch. 394, § 2.

CONSTRUCTION

48-02-01. Definition of governing board. Repealed by S.L. 1995, ch. 443, § 29.

48-02-02. Prerequisite to building and repair by contract — Exceptions. Repealed by S.L. 1995, ch. 443, § 29.

48-02-03. Method used in securing bids — Emergency waiver. Repealed by S.L. 1995, ch. 443, § 29.

48-02-04. Contents of advertisement. Repealed by S.L. 1995, ch. 443, § 29.

48-02-05. Plans and specifications — Place of filing. Repealed by S.L. 1995, ch. 443, § 29.

48-02-05.1. Bid requirements and acceptance. Repealed by S.L. 1995, ch. 443, § 29.

48-02-06. Opening bids — Award of contract — Bond required. Repealed by S.L. 1995, ch. 443, § 29.

48-02-06.1. Public contract to contain a fuel cost line item and a fuel cost adjustment clause. Repealed by S.L. 1995, ch. 443, § 29.

48-02-06.2. Bonds from contractors for public improvements. A governing body, as defined in section 48-01.1-01, authorized to enter into a contract for construction of a public improvement in excess of one hundred thousand dollars shall take from the contractor a bond before permitting any work to be done on that contract. The bond must be for an amount equal at least to the price stated in the contract. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and

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provisions of the contract and pay all bills or claims on account of labor and materials including supplies used for machinery and equipment, performed, furnished, and used in the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid must include the requirement that interest of the amount authorized under section 13-01-14 be paid on bills and claims not paid within ninety days. The bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor, or any subcontractor, as provided in this chapter, may sue on the bond.

Source: S.L. 1995, ch. 443, § 17; 1997, ch. 398, § 1.

48-02-10.1. Advertising for bids. Advertisement for bids for such materials as are produced in North Dakota must be made in accordance with chapter 48-01.1, and may be included as a part of any advertisement for other items of the improvement. Each bid for furnishing materials produced in this state must contain the bidder's certificate as to where the product is found, produced, or manufactured in this state.

Source: S.L. 1953, ch. 282, § 2; R.C. 1943, 1957 Supp., § 48-02101; S.L. 1995, ch. 443, § 18.

48-02-13. Architects and engineers — Duties. The governing body shall employ the architect or engineer furnishing the plans as provided in this chapter, or some other qualified person to provide construction administration and construction observation services for which the plans and specifications are prepared, as provided by section 48-01.1-04. The architect or engineer shall see that such contractor performs the work in compliance with the plans and specifications. The architect or engineer is entitled to receive a reasonable compensation to be fixed by the governing body. The duties imposed and powers conferred upon the governing body by this chapter apply to any successor to the governing body.

Source: S.L. 1911, ch. 235, § 11; C.L. 1913, § 1838; S.L. 1929, ch. 195, § 11; R.C. 1943, § 48-0213; S.L. 1995, ch. 443, § 19.

48-02-15. Claim for work or improvement — Suit on contractor's bond. Any person who has furnished labor or material for any work or improvement for this state, any of its departments, or any school district, city, county, or township in the state in respect of which a bond is furnished under this chapter and who has not been paid in full within ninety days after completion of the contribution of labor or materials, may sue on the bond for the amount unpaid at the time of institution of suit. However, any person having a direct contractual relationship with a subcontractor, but no contractual relationship with the contractor furnishing the bond, does not have a claim for relief upon the bond unless that person has given written notice to the contractor, within ninety days from the date on which the person completed the contribution, stating with substantial accuracy the amount claimed and the name of the person for whom the contribution was performed. Each notice must be served by registered mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office, conducts business, or has a residence.

The contracting body and the agent in charge of its office are authorized and directed to furnish a certified copy of the bond and the contract for which it was given to anyone making an application therefor who submits an affidavit that either the person has supplied labor or materials for such work or improvement and that payment has not been made, or that the person is being sued on the bond. Applicants shall pay the actual cost of the preparation of the certified copy of the bond and the contract. The certified copy of the bond is prima facie evidence of the contents, execution, and delivery of the original.

Source: S.L. 1931, ch. 223, § 1; R.C. 1943, § 48-0215; S.L. 1973, ch. 375, § 1; 1985, ch. 82, § 119; 1995, ch. 443, § 20.

48-02-19. Public buildings and facilities — Statement of compliance with accessibility guidelines. State agencies and governing bodies of political subdivisions shall require a statement from any person preparing the plans and specifications for a public building or facility that, in the professional judgment of that person, the plans and specifications are in conformance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36], subject to the exception stated in section 54-21.3-04.1.

Source: S.L. 1973, ch. 376, § 1; 1975, ch. 428, § 1; 1977, ch. 330, § 2; 1979, ch. 493, § 1; 1983, ch. 511,

48-02-07. Allowance and payment of estimates — Investment of retainage. At least once in each calendar month during the continuance of work upon any public building or erection begun and carried on under the provisions of this chapter, the governing board, or a committee thereof duly authorized by the board for that purpose, shall meet and receive and consider estimates furnished by the supervising architect or the superintendent of construction of such building or erection, and shall allow such estimates in an amount of the estimated value of the labor and material furnished upon such contract, and of the material then upon the ground for use in the construction thereof, subject to retentions as follows: ten percent of each estimate presented until such time as the project is fifty percent completed, with no further retainage on estimates during the continuance of the contract. The governing board may, however, upon completion of ninety-five percent of the contract according to the estimates, pay to the contractor ninety-five percent of the amount retained from previous estimates. The remaining amount retained shall be paid to the contractor in such amounts and at such times as are approved by the supervising architect or superintendent of construction, with final payment of all moneys due to the contractor to be made immediately following completion and acceptance of the project. If no supervising architect and no superintendent of construction is employed upon such contract, the contractor, at the end of each calendar month during the continuance of work under any such contract, may furnish to such board or public body in charge of such work like estimates which shall be allowed in like manner. Said board or committee thereof, immediately after considering and allowing any such estimate, shall certify and forward the same to the state auditor, county auditor, city auditor, or other official having the power to draw warrants, who forthwith shall draw his warrant upon the proper fund and transmit the same promptly to the contractor entitled thereto. On the amounts of estimates retained, as provided herein, the governing board, authorized committee, or public body in charge of such work may invest or deposit said retained amounts in any financial association or institution in North Dakota, so that the contractor's money will be earning interest or dividends for the benefit of the contractor. Any amounts so invested or deposited shall remain in the name of the governing board, authorized committee, or public body in charge of such work until final payment of all money due to the contractor is to be made. Further, no contractor shall use such account in any manner whatsoever until released and received by him upon completion of the contract.

Source: S.L. 1911, ch. 235, § 5; C.L. 1913, § 1833; S.L. 1929, ch. 195, § 5; 1937, ch. 111, § 1; R.C. 1943, § 48-0207; S.L. 1959, ch. 341, § 1; 1971, ch. 456, § 1; 1975, ch. 427, § 1.

48-02-08. Estimate — Failure to certify — Rate of interest. In case the board or committee mentioned in section 48-02-07 shall fail or neglect to certify any estimate allowed or final payment upon completion and acceptance, or the proper official shall neglect or fail to issue a warrant as provided in section 48-02-07, for a period of more than thirty days from the date of such estimate or completion date, then said estimate or final payment shall draw interest from its date at the rate per annum of two percentage points below the Bank of North Dakota prime interest rate as set thirty days from the date of such estimate or completion date until the issuance of a proper warrant therefor. Such interest shall be computed and added to the face of said estimate or final payment by the officer required to issue such warrant, shall be included in the warrant when drawn, and shall be charged to the fund upon which payment for the contract is to be made. No payment for, or on account of, any contract made under the provisions of this chapter shall be made except upon estimate of the supervising architect or superintendent of construction or contractor as provided in section 48-02-07.

Source: S.L. 1911, ch. 235, § 5; C.L. 1913, § 1833; S.L. 1929, ch. 195, § 5; 1937, ch. 111, § 1; R.C. 1943, § 48-0208; S.L. 1971, ch. 456, § 2; 1981, ch. 467, § 2.

48-02-09. Appropriations not to be diverted. No portion of any special appropriation for the erection of any building or improvement, or for the doing of any work, shall be drawn from the state treasury in advance of the work done or of materials furnished. The same shall be drawn only upon proper estimates thereof approved by the supervising agency or the board of higher education, whichever is the governing body of the institution for which the building is being erected. No portion of any appropriation for any purpose shall be drawn from the treasury before it shall be required for the purpose for which it is made, and no appropriation which is or may be made for any purpose with respect to such construction or improvement shall be drawn or used for any other purpose until the construction or improvement for which such appropriation was made is fully completed and paid for.

Source: S.L. 1911, ch. 235, § 6; C.L. 1913, § 1834; S.L. 1929, ch. 195, § 6; R.C. 1943, § 48-0209; S.L. 1991, ch. 592, § 15.

48-02-10. Material produced in state given preference for use in public buildings. All boards or commissions purchasing material for use in making alterations, repairs, or additions, or in erecting new buildings, and all contractors making such alterations, repairs, or additions, or erecting new buildings or improvements therewith or pertaining thereto, always, price and quality being equal or better, shall purchase materials manufactured or produced within this state and, next, purchase such as have been manufactured or produced in part in North Dakota.

Source: S.L. 1955, ch. 295, § 1; R.C. 1943, 1957 Supp., § 48-0210.

48-02-10.1. Advertising for bids. Advertisement for bids for such materials as are produced in North Dakota shall be made in accordance with sections 48-02-03, 48-02-04, and 48-02-05, and may be included as a part of any advertisement for other items of the improvement. Each bid for furnishing materials produced in North Dakota shall be required to contain the bidder's certificate as to where the product is found, produced, or manufactured in the state of North Dakota.

Source: S.L. 1953, ch. 282, § 2; R.C. 1943, 1957 Supp., § 48-02101.

48-02-10.2. Opening bids, award of contracts, preference for native products. At the time and place specified in the notice the governing body shall open publicly and read aloud all bids received and may reject all bids or award the contract to the lowest and best bidder. If there be one or more bids for furnishing materials, products and supplies which are found, produced or manufactured within the state of North Dakota from native natural resources, the lowest of such bids shall be preferred over any bids for furnishing such materials, products, and supplies which are not found, produced or manufactured in North Dakota from native natural resources, unless the accepting of such lowest bid would result in the furnishing of material which could not be supplied in sufficient quantities to meet the needs of the purchaser or of a quality which is not at least equal to out-of-state products when tested by recognized national standards of the industry, in which the producer of the material offered is engaged, and if such North Dakota products are not higher in price than the non-North Dakota product, or not priced inconsistent with the value thereof. If the bid of the North Dakota supplier is rejected as not being of quality at least equal to out-of-state products, the reason why such North Dakota materials, products and supplies are not reasonably equal to the out-of-state products under recognized standards of the industry shall be reduced to writing, made a matter of record, and be furnished to the North Dakota bidders.

Source: S.L. 1953, ch. 282, § 3; R.C. 1943, 1957 Supp., § 48-02102.

48-02-10.3. Violations — Remedy. Any contract entered into or carried out in violation of the provisions of sections 48-02-10, 48-02-10.1, and 48-02-10.2 shall be void to the full extent of its provisions relating to North Dakota products and any such contract or purchase order shall be unenforceable in any court.

Any person who shall have submitted a bid shall have the right to maintain an action in equity to prevent the violation of the terms of sections 48-02-10, 48-02-10.1, and 48-02-10.2 within fifteen days after the letting of the contract.

Source: S.L. 1953, ch. 282, § 4; R.C. 1943, 1957 Supp., § 48-02103.

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54-40.3-01. Joint powers agreements — General authority.

1. Any county, city, township, city park district, school district, or other political subdivision of this state, upon approval of its respective governing body, may enter into an agreement with any other political subdivision of this state for the cooperative or joint administration of any power or function that is authorized by law or assigned to one or more of them. Any political subdivision of this state may enter into a joint powers agreement with a political subdivision of another state or political subdivision of a Canadian province if the power or function to be jointly administered is a power or function authorized by the laws of this state for a political subdivision of this state and is authorized by the laws of the other state or province. A joint powers agreement may provide for:
   a. The purpose of the agreement or the power or function to be exercised or carried out.
   b. The duration of the agreement and the permissible method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of any property upon the partial or complete termination.
   c. The precise organization, composition, and nature of any separate administrative or legal entity, including an administrator or a joint board, committee, or joint service council or network, responsible for administering the cooperative or joint undertaking. Two or more political subdivisions which enter into a number of joint powers agreements may provide a master administrative structure for the joint administration of any number of those agreements, rather than creating separate administrative structures for each agreement. However, no essential legislative powers, taxing authority, or eminent domain power may be delegated by an agreement to a separate administrative or legal entity.
   d. The manner in which the parties to the agreement will finance the cooperative or joint undertaking and establish and maintain a budget for that undertaking. The parties to the agreement may expend funds pursuant to the agreement, use unexpended balances of their respective current funds, enter into a lease-option to buy and contract for deed agreements between themselves and with private parties, accumulate funds from year to year for the provision of services and facilities, and otherwise share or contribute property in accordance with the agreement in cooperatively or jointly exercising or carrying out the power or function. The agreement may include the provision of personnel, equipment, or property of one or more of the parties to the agreement that may be used instead of other financial support.
   e. The manner of acquiring, holding, or disposing of real and personal property used in the cooperative or joint undertaking.
   f. The acceptance of gifts, grants, or other assistance and the manner in which those gifts, grants, or assistance may be used for the purposes set forth in the agreement.
   g. The process to apply for federal or state aid, or funds from other public and private sources, to the parties for furthering the purposes of the agreement.
   h. The manner of responding for any liability that might be incurred through performance of the agreement and insuring against that liability.
   i. Any other necessary and proper matters agreed upon by the parties to the agreement.
2. Any county, city, township, city park district, school district, or other political subdivision of this state may enter into an agreement in the manner provided in subsection 1 with any agency, board, or institution of the state for the undertaking of any power or function which any of the parties is permitted by law to undertake. Before an agreement entered into pursuant to this subsection is effective, the respective governing body or officer of the state agency, board, or institution must approve the agreement and the attorney general must determine that the agreement is legally sufficient.
3. An agreement made pursuant to this chapter does not relieve any political subdivision or the state of any obligation or responsibility imposed by law except to the extent of actual and timely performance by a separate administrative or legal entity created by the agreement. This actual and timely performance satisfies the obligation or responsibility of the political subdivision.

Source: S.L. 1993, ch. 401, § 49.

54-40.3-02. Clarification of constitutional authority and effect of other statutes — Construction.

1. The specificity of this chapter, chapter 54-40, or any other law may not be construed to limit the general authority of a political subdivision to enter into agreements pursuant to section 10 of article VII of the Constitution of North Dakota, except for specific limitations on that authority, and subject to specific procedural requirements, imposed by this chapter, any other law, or a home rule charter.
2. This chapter does not dispense with the procedural requirements of any other statute providing for the joint or cooperative exercise of any governmental power.

Source: S.L. 1993, ch. 401, § 49.

54-40.3-03. Political subdivisions encouraged to file agreements with advisory commission on intergovernmental relations. A political subdivision entering into a joint powers agreement pursuant to this chapter or any other law is encouraged to file one copy of the agreement and explanatory material with the advisory commission on intergovernmental relations, to assist the commission in providing information for other political subdivisions exploring cooperative arrangements.

Source: S.L. 1993, ch. 401, § 49.

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